

This letter discusses nexus and other issues related to determining which sales taxes are owed. See 35 ILCS 105/1 et seq. (This is a GIL).

September 6, 2002

Dear Sir or Madam:

This letter is in response to your letter dated May 16, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We are starting a new business and would like to know the tax consequences and responsible parties for paying sales and use taxes. We have contacted the Illinois Taxpayer Assistance Division, and they requested we contact you.

We are in the business of manufacturing and selling coated canvas either in rolls or cut sheets. The way the procedure will work is we manufacture the liquid coating in STATE. The liquid coating is sold to AAA, a company located in IL. AAA then coats their canvas with the liquid coating they purchased from us. AAA then sells 100% of the finished product back to us. The finished product stays at AAA on their shelf, although we own the product, they ship our entire product to our customers for us. We then sell the finished product to end-users. Our customers may then use it for a variety of uses. Some may resell it, some are fine art printers who will print on the canvas and then sell a finished print. All sales are collected by COMPANY in STATE.

In Summary: Orders are taken in STATE, products are manufactured and stored in Illinois, Illinois is the shipped from state, end users are a combination of resellers and consumers.

If you could please respond in writing to this letter as soon as possible we would greatly appreciate it. We will begin to sell product June 1, 2002 and would like to know the tax consequences and rates for such by the time we begin to collect monies.

Thank you,

Whether a retailer is subject to Illinois Retailers' Occupation Tax (sales tax) liability or is required to collect Illinois Use Tax from its Illinois customers depends upon whether that retailer will be subject to Illinois law. The following information outlines the principles of nexus.

An "Illinois Retailer" is one that either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collected. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax law. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. *Quill* at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to *Brown's Furniture, Inc. v. Wagner*, 171 Ill.2d 410 (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur use Tax on the purchase of the out-of-State goods and have a duty to self-assess their use Tax liability, and the customer must remit the amount directly to the State.

In general, the imposition of the various local sales taxes in Illinois takes effect when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115(b), enclosed. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred.

If a purchase order is accepted outside the State, but the property being sold is located in an inventory of the retailer that is located in an Illinois jurisdiction that has imposed a local tax, then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. In situations in which the retailer has nexus, but both the purchase order acceptance and the location of the property being purchased are outside of the State of Illinois, such sales would only be subject to the Illinois Use Tax at the rate of 6.25%.

With regard to sales for resale, sellers making sales for resale in Illinois are obligated to obtain valid Certificates of Resale from their purchasers. A valid Certificate of Resale contains all the information required in 86 Ill. Adm. Code 130.1405, enclosed.

Although active registration or resale numbers on Certificates of Resale are still preferred, the Illinois Retailers' Occupation Tax Act does provide that the presumption that a sale is not a sale for resale where there has been a failure to present an active registration number or resale number and a certification to the seller that a sale is for resale may be rebutted by other evidence that all of the seller's sales are sales for resale or that a particular sale is a sale for resale. See 35 ILCS 120/2c. In light of this statutory language, certifications from purchasers on Certificates of Resale in lieu of resale numbers that described, for example, a drop-shipment situation and the fact that the purchaser has no contact with Illinois that would require them to be registered and that they choose not to obtain Illinois resale numbers would constitute evidence that the sale is a sale for resale despite the fact that no registration number or resale number is provided. The risk run by companies in accepting such a certification and the risk run by purchasers in providing such a certification is that an Illinois auditor is much more likely to go behind a Certificate of Resale that does not contain a valid resale number and require that more information be provided by companies as evidence that the particular sale was, in fact, a sale for resale. See 86 Ill. Adm. Code 130.225(d).

With regard to sales of the final product, your letter indicates that you accept orders in STATE but the product is shipped from your inventory in Illinois. If this the case, you would owe Retailers' Occupation Tax and any local sales tax for CITY. In the event the purchaser is purchasing the product for resale, you could sell the product to them tax free, but you must obtain a valid Certificate of Resale from them.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.